

October 10 2013 10:57 AM

KEVIN STOCK
COUNTY CLERK
NO: 13-2-13886-2SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

THAN ORN, individually,

Plaintiff,

vs.

CITY OF TACOMA, a municipal
corporation, and; KRISTOPHER CLARK, in
his individual capacity,

Defendants.

NO.

COMPLAINT FOR DAMAGES

JURY DEMANDED

COMES NOW Plaintiff Than Orn, by and through his attorneys, Darrell Cochran, Loren Cochran and Pfau Cochran Vertetis Amala PLLC, and Thomas Balerud and The Law Office of Thomas A. Balerud and hereby alleges as follows:

I. INTRODUCTION

1.1 Thirty-four year old Than Orn was unlawfully shot multiple times in the back, the back shoulder and the back of his neck by Tacoma police officer Kristopher Clark for failing to obey police instructions.

1.2 As a result of his injuries, Plaintiff Orn is paralyzed below the waist and requires continuing medical and respite care. Orn has also lost his ability to work in his chosen profession and has experienced severe mental and emotional injuries including the collapse of his marriage as a result of Kristopher Clark's excessive and unlawful use of force.

1.3 The City of Tacoma conducted a Pursuit Review of the police response involving Than Orn and concluded that all officers needed; 1) Additional Pursuit Immobilization Technique (PIT) Training; 2) Improved radio communications relaying relevant information; 3) To review of the number of responding vehicles, and; 4) Improved command and on-scene supervisory directions. In addition, the City of Tacoma conducted a Use of Deadly Force review and concluded that Officer Clark needed additional training in environmental awareness, tactical positioning and officer safety. The systemic failures of the Tacoma Police Department, including but not limited to those areas addressed above, resulted in an unnecessary and unlawfully excessive use of force which has left Than Orn permanently disabled, in constant physical pain and mentally and emotionally devastated. The City of Tacoma and its police department were deliberately indifferent to the constitutional rights of Than Orn by failing to adequately train its officers, and/or are believed to have express policies, and/or are believed to have widespread practices which encouraged and enabled the use deadly force in an unconstitutional manner that jeopardizes the safety of all citizens.

II. PARTIES

2.1 Plaintiff Than Orn was a resident of Pierce County, Washington at all times relevant to this action.

2.2 Defendant City of Tacoma is a Washington municipal entity with police powers existing pursuant to the Washington State Constitution and the Constitution of the United States. Defendant City of Tacoma is responsible for formulating and implementing the Tacoma Police Department's policies and procedures and ensuring its officers are properly and adequately trained.

1 2.3 Defendant Kristopher Clark is or was at all relevant times a City of Tacoma
2 police officer who, all times relevant hereto, was acting under color of law.

3 **III. JURISDICTION AND VENUE**

4 3.1 Venue is proper in Pierce County under RCW 4.12.020.

5 3.2 Jurisdiction is proper under RCW 4.96.010 and 4.96.020. A City of Tacoma
6 claim for damages form was presented to the City of Tacoma, City Clerk's Office as directed
7 on the tort claim form. More than sixty (60) calendar days have elapsed since the filing of the
8 tort claim form such that filing of this action is allowed pursuant to Pursuant to RCW
9 4.96.020.
10

11 **IV. JURY DEMAND**

12 4.1 Plaintiff hereby demands a jury trial on the causes of action set forth herein.

13 **V. STATEMENT OF FACTS**

14 5.1 On October 12, 2011, at or around 8:30 p.m., Plaintiff Than Orn was driving
15 his family car, registered to his wife at his home address, in South Tacoma.

16 5.2 At or about that same time, upon information and belief, Tacoma Police
17 Department (TPD) Patrol Sgt. Alan Morris began following Orn allegedly because Orn was
18 driving without lights.
19

20 5.3 A short time later, Morris called over the police radio system to report that Orn
21 allegedly would not stop the vehicle. Approximately five (5) minutes after he began
22 following Orn, Morris told dispatch the vehicle was not driving recklessly, just that driver
23 allegedly would not stop.
24
25
26

1 5.5 Upon information and belief, TPD police units were ordered to conduct a
2 Pursuit Immobilization Technique (PIT) maneuver on Than Orn's vehicle but failed to do so.

3 5.6 At approximately 8:43 p.m., all units were ordered to stay in vehicles.

4 5.7 At or about this same time, Than Orn continued on toward his apartment
5 complex located at 6634 Tacoma Mall Boulevard. Upon information and belief, Orn's speed
6 never exceeded 30 miles per hour.
7

8 5.8 At approximately 8:46 p.m., Orn pulled into his apartment complex with TPD
9 K-9 Officer David Johnson directly behind him. Officer Johnson later testified under oath
10 that Orn's vehicle speed was little more than a crawl. Upon information and belief, Officer
11 Johnson ordered all units again to stay in their vehicles.

12 5.9 At or about this same time, Defendant Kristopher Clark was positioned, along
13 with approximately twelve (12) additional police units, at or very near the parking lot of Than
14 Orn's apartment complex waiting for Orn to arrive.
15

16 5.10 As Plaintiff Orn pulled into his apartment complex at little more than a crawl,
17 Defendant Kristopher Clark exited his police vehicle, despite orders to stay in his vehicle, and
18 according to TPD Officer Robert DeNully, Clark began "running and shooting" at Plaintiff
19 Than Orn. Defendant Clark is the only TPD officer to draw and fire his weapon at Orn.
20

21 5.11 Defendant Clark shot ten (10) times. According to a ballistics investigation,
22 eight (8) of Clark's shots entered through the rear of Than Orn's vehicle as Orn's vehicle was
23 moving away from Defendant Clark. The other two (2) shots by Clark were fired through the
24 rear passenger window or the rear passenger wing window. These two other shots were again
25 fired while Orn's vehicle traveled away from Defendant Clark.
26

5.12 Plaintiff Than Orn was struck multiple times in the neck, right shoulder and back by Defendant Clark's gunshots. According to medical reports, Orn suffered complete spinal cord injury (SCI) at the first lumbar vertebra due to a bullet lodged in his spine. Plaintiff also suffered severe cervical spine trauma including fractures of the fourth, fifth and sixth cervical vertebrae transverse process, as well as a fracture to his right scapular. Plaintiff Orn is not expected to recover any function below the L1 level of his spine.

VI. CAUSES OF ACTION

A. Unconstitutional Use of Excessive Force by Defendant Kristopher Clark.

6.1 Plaintiff re-alleges the paragraphs set forth above.

6.2 The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures of the person. This protects citizens and members of the community and prohibits the government from using excessive force against those citizens. The shooting of a fleeing suspect constitutes a Fourth Amendment “seizure.” The Fourteenth Amendment of the U.S. Constitution applies the Fourth Amendment's provisions against state and local actors.

6.3 At all material times, Officer Clark operated under color of law.

6.4 Officer Clark violated the Fourth Amendment's clearly established prohibitions against excessive force when he employed the use of deadly force against Than Orn for failing to yield or failing to obey instructions without any objectively reasonable belief that Orn posed an immediate threat of harm to himself or others. Than Orn was unarmed and was not suspected of a violent criminal offense. Moreover, Orn was driving out

1 of the path of police officers at an extremely slow speed but was nonetheless shot by a
2 chasing Officer Clark in the back, back shoulder and the back of the neck.

3 6.5 As a direct and proximate result of these constitutional violations, Than Orn
4 was shot and seriously and permanently injured, and continues to suffer, experiencing
5 substantial physical, mental and emotional pain, anguish and anxiety.
6

7 **B. Violations of Constitutional Rights by Defendant City of Tacoma.**

8 6.6 Plaintiff re-alleges the paragraphs set forth above.

9 6.7 Defendant City of Tacoma Police Department violated Plaintiff's
10 Constitutional rights under the Fourth and Fourteenth Amendments to the U.S. Constitution,
11 as set forth herein, and in other respects as well.

12 6.8 Defendant City of Tacoma and the Tacoma Police Department have customs,
13 policies, and practices that amount to deliberate indifference to the rights of persons with
14 whom its officers regularly come into contact, including nonviolent suspects like Than Orn.
15

16 6.9 Defendants City of Tacoma and the Tacoma Police Department, with
17 deliberate indifference, failed to train the Tacoma Police Department's law enforcement
18 officers and failed to adopt and implement policies for, among other things, the use of de-
19 escalation techniques, non-lethal tactics, proper nonviolent suspect apprehension techniques,
20 and the decision-making process that should accompany use of deadly force.
21

22 6.10 The failure by Defendant City of Tacoma and the Tacoma Police Department
23 to adequately and appropriately train its officers and employee amounts to deliberate
24 indifference to the rights of the persons with whom the Tacoma Police Department's
25 employees regularly come into contact, including nonviolent suspects like Than Orn.
26

1 6.11 It was highly predictable that Defendant's failures would result in
2 constitutional violations, like those that occurred in this case. Plaintiff's permanently
3 debilitating injuries are the foreseeable consequence of the Tacoma Police Department's
4 failure to equip its law enforcement officers with the necessary training and tools to handle
5 recurring situations, such as those involving a nonviolent suspect failing to yield or failing to
6 obey an officer's instructions.
7

8 6.12 The actions of the officers involved, which deprived the Plaintiff of his
9 Constitutional rights, conformed to official policy, custom, and practice of Defendant City of
10 Tacoma. Defendant City of Tacoma and the Tacoma Police Department's policy of shooting
11 an unarmed individual failing to yield, but avoiding officers and driving at an extremely low
12 speed is blatantly unconstitutional and jeopardizes the safety of all citizens, as evidenced by
13 the police shooting of Than Orn. Moreover, Defendant City of Tacoma has ratified the
14 conduct of Defendant Clark in relation to the injuries of Than Orn, by refusing to
15 appropriately sanction Defendant Clark for his actions.
16

17 6.13 As a result of the actions and deliberate indifference of Defendant City of
18 Tacoma and the Tacoma Police Department, Than Orn was shot multiple times in the back,
19 back shoulder and neck, including the spine. Plaintiff Orn is permanently injured and
20 continues to suffer, experiencing substantial physical, mental and emotional pain, anguish and
21 anxiety.
22

23 **C. Negligent and Grossly Negligent Hiring, Training and Supervision of**
24 **Employees and Agents.**

25 6.14 Plaintiff re-alleges the paragraphs set forth above.
26

1 6.15 Defendants have a duty to use reasonable care in hiring, training and
2 supervising employees and agents.

3 6.16 Defendants breached this duty in a negligent and grossly negligent manner. As
4 a proximate result of Defendants' breach, Than Orn is permanently injured and continues to
5 suffer, experiencing substantial physical, mental and emotional pain, anguish and anxiety.
6

7 **F. Respondeat Superior**

8 6.17 Plaintiff re-alleges the paragraphs set forth above.

9 6.18 At all times material herein, Defendants were responsible for the actions of
10 their agents and employees under the theory of *respondeat superior*.

11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff requests a judgment for Plaintiff and against Defendants
13 Kristopher Clark and the City of Tacoma as follows:
14

15 1) Awarding general, special and punitive damages, including damages for pain
16 and suffering, pursuant to 42 U.S.C. §§ 1983 and 1988, in an amount to be proven at trial;

17 2) Awarding costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988,
18 or as otherwise available under the law;

19 3) General and special damages as allowed by Washington law, including but not
20 limited to economic and non-economic injuries in an amount to be proven at trial;

21 4) Awarding any and all applicable interest on the judgment; and
22

23 5) Awarding such other and further relief as the Court deems just and proper.

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26

1 DATED this 9th day of October, 2013.

2 PFAU COCHRAN VERTETIS AMALA, PLLC

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4
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16 4824-8909-5190, v. 1